

Appl. No. 10/774,739
Amdt. dated April 14, 2008
Reply to Office Action of November 14, 2007

Amendments to the Drawings

The attached sheets of drawings include new Figs 4 and 5. These sheets replace the original sheets including Figs. 1-3.

Attachment: Three Replacement Drawing Sheets

REMARKS

Applicants have carefully reviewed the Office Action mailed November 14, 2007, prior to preparing this response. Currently claims 16-32 are pending in the application, wherein claims 16-32 have been rejected. Claims 16 and 29 have been amended and claim 21 has been cancelled. Support for the amendments is found in the specification, claims, and drawings as filed. No new matter has been added. Favorable consideration of the above amendments and following remarks is respectfully requested.

Drawings

The drawings have been amended to show the limitations “wherein eight axial members are uniformly spaced apart by 45 about the circumference of the shaft” and “wherein the distal shaft portion has fewer axial members than the proximal shaft portion.” Support for these claim limitations can be found, for example, at page 5, line 23 through page 6, line 5. No new matter has been added.

Claim Rejections under §112

Claims 19-21 have been rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Examiner states that support for claims 19-21 is not present in the application. Applicants respectfully traverse the rejection. Support for claims 19 and 20 can be found, for example, at page 5 line 21 through page 6 line 5 of present specification. This excerpt recites:

The axial members are preferably uniformly spaced about the circumference of the shaft. Virtually any number of axial members may be utilized, depending on the particular characteristics desired. For example, four or eight axial members may be utilized wherein the axial members are uniformly spaced apart by 90° or 45°, respectively, about the circumference of the shaft. In addition, only a portion of the shaft may include a plurality of axial members. For example, the distal shaft portion may have fewer axial members than the proximal shaft portion such that the distal shaft portion is more flexible.

Claim 21 has been cancelled with this paper. Withdrawal of the rejection is respectfully requested.

Claim Rejections under §102

Claims 16-17, 20, 22, 24, and 29-39 have been rejected under 35 U.S.C. §102(b) as being anticipated by Webster Jr. (U.S. Patent No 5,057,092). Applicants respectfully traverse the rejection.

Claims 33-39 do not currently exist in the present application, therefore they cannot be rejected. In formulating the rejection, the Examiner comments on claims 29-30. Applicants will continue under the assumption that the Examiner meant to reject claims 29-30. Clarification is respectfully requested.

Independent claim 16 has been amended to recite:

An intravascular catheter comprising an elongate shaft having a reinforcement layer comprising a tubular braid having a first helical member interwoven with a second helical member and a plurality of axial members disposed between the first helical member and the second helical member for the entire length of the axial member.

MPEP 2131 states that, in order to anticipate a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim.' *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." Webster Jr. does not teach each and every limitation of the claim as is taught in the present invention. Webster Jr. does not teach the axial members disposed between the first helical member and the second helical member for the entire length of the axial member. Figures 2 and 5 of Webster Jr. illustrate the longitudinal warp member 28 weaving over one helical member and under the other helical member. The advantage of having the axial members disposed between the first helical member and the second helical member for the entire length of the axial member is clearly disclosed at page 12, lines 17-19 of the present application, which recite, "by positioning the axial member 34 between the helical members 32A and 32B, the axial members 34 do not create a radial protrusion or become fixed to an adjacent polymer layer, both of which may create undesirable effects." Additionally, there is no motivation for one of ordinary skill in the art to modify the structure of Webster Jr. to achieve the claimed structure. Webster Jr. thus does not teach each and every element of the claims, as is required for an anticipation rejection. Reconsideration and withdrawal of the rejection are respectfully requested. Applicant submits that claims 17, 20, 22, and 24 are also in condition for allowance as they depend from claim 16 and add significant limitations to further distinguish them from the prior art.

In formulating the rejection for independent claim 29 and dependent claim 30, the Examiner states, "they encompass the same scope of the invention as to that of claims 1-2 except that they are drafted in method format instead of apparatus format. The claim(s) is/are therefore rejected for the same reason as set forth above." Again, only claims 16-32 are currently pending, and therefore claims 1-2 should not be a factor in formulating the rejection. Applicants will continue under the assumption that the Examiner meant to reference claims 16-17.

Independent claim 29 recites, "A method of making a portion of a shaft of an intravascular catheter, the method comprising the steps of: braiding a first helical member and a second helical member about a carrier such that a plurality of axial members are disposed between the first and second helical members for the entire length of the axial member." As discussed above with reference to independent claim 16, Webster Jr. does not teach the axial members disposed between the first helical member and the second helical member for the entire length of the axial member braiding method as is taught in the present invention. Therefore, Webster Jr. also does not teach the method of making a portion of a shaft with the entire of length of the axial member disposed between the first and second helical members. MPEP 2131 states that, in order to anticipate a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." Additionally, there is no motivation for one of ordinary skill in the art to modify the structure of Webster Jr. to achieve the claimed structure. Webster Jr. thus does not teach each and every element of the claims, as is required for an anticipation rejection. Reconsideration and withdrawal of the rejection are respectfully requested. Applicants submit that claim 30 is also in condition for allowance as it depends from claim 29 and adds significant limitations to further distinguish it from the prior art.

Claim Rejections under §103

Claims 18-21 and 31-32 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Webster Jr. (U.S. Patent No 5,057,092). Applicants respectfully traverse the rejection. For similar reasons given above as well as others, claims 18-21 and 31-32, which depend from claims 16 and 29, respectively, and include significant additional limitations, are believed to be allowable over Webster Jr., and Applicants respectfully request withdrawal of the rejection.

Claims 23 and 25-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Webster Jr. (U.S. Patent No 5,057,092) in view of Mortier et al. (U.S. Patent No 5,730,733). Applicants respectfully traverse the rejection. As discussed above with respect to independent claim 16, Webster Jr. does not teach each and every element of independent claim 16. Mortier et al. do not supply the missing elements. For at least these reasons, claims 23 and 25-28, which depend from independent claim 16 and include significant additional limitations, are believed to be allowable over the combination of Webster Jr. and Mortier et al., and Applicants respectfully request withdrawal of the rejection.

Reexamination and reconsideration are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Dean A. Schaefer et al.

By their Attorney,

Date: April 14, 2008

/david m. crompton/
David M. Crompton, Reg. No. 36,772
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, MN 55403-2420
Telephone: (612) 677-9050
Facsimile: (612) 359-9349

Attachment: Three Replacement Drawing Sheets